

Bauer, Jaime (DEQ)

From: Sue Kriebel [SKriebel@vbgov.com]
Sent: Monday, March 30, 2015 4:47 PM
To: Bauer, Jaime (DEQ)
Cc: Bill J. Johnston; Kayode Aransiola
Subject: FW: Preliminary Comments on the Draft Virginia Beach MS4 Permit
Attachments: Jamie Bauer - Preliminary Comments on the Draft Virginia Beach MS4 Permit.pdf

Jamie,

Please find as requested the electronic submittal. I apologize in advance for the askew copy but that is how it was sent to me. Hard copy has been overnighted to you.

Thanks
Sue

Sue E. Kriebel, P.E., LEED AP
Water Resources Engineer
Department Of Public Works, Engineering
Building 2, Suite 345
Virginia Beach, VA 23456
Office 757-385-4131

From: Kayode Aransiola
Sent: Monday, March 30, 2015 3:55 PM
To: Sue Kriebel
Subject: FW: FedEx Delivering physical address

Fyi....

Thank you,

Kayode C. Aransiola
M.Eng, A. DBIA, EIT, SWPR

Public Works: Delivering Excellence, Serving with Pride!

From: Bauer, Jaime (DEQ) [<mailto:Jaime.Bauer@deq.virginia.gov>]
Sent: Monday, March 30, 2015 9:32 AM
To: Kayode Aransiola
Cc: Bill J. Johnston
Subject: RE: FedEx Delivering physical address

Comments may be submitted electronically, which is preferred. However, if you send a hard copy for hand delivery the address is 629 E. Main Street, Richmond, VA 23219.

From: Kayode Aransiola [<mailto:KAransio@vbgov.com>]
Sent: Monday, March 30, 2015 9:25 AM
To: Bauer, Jaime (DEQ)
Subject: FedEx Delivering physical address
Importance: High

Good morning Mrs. Bauer, we need to FedEx overnight a letter to you but we only have your PO Box address (P.O. Box 1105). Would you please send me your physical address that FedEx can deliver the letter to?

This is in regards to City of Virginia Beach MS4 response that is due March 31.

Thank you,

Kayode C. Aransiola,
M.Eng, A. DBIA, EIT, SWPR

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Water Resources Division
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March 30, 2015

Jaime L. Bauer
Environmental Specialist II
Department of Environmental Quality
Commonwealth of Virginia
P.O. Box 1105
Richmond, VA 23218

RE: Amend and Reissue the Draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act Permit # VA0088676

Dear Ms. Bauer:

Please consider this the Preliminary Comments on the Draft Virginia Beach MS4 Permit (3/30/2015).

All Comments in the Hampton Roads Planning District Commission Regional Response Letter dated 3/24/2015 are incorporated into this response and included by reference.

Part I A5. Maintenance Fees. It is unclear as to the reason for the incorporation of these requirements into the Permit. The process of cutting and mailing checks in major cities, such as Virginia Beach, involves many departments. Checks are cut and mailed by the Purchasing Department and they are never seen by the Permit Administrator. Obtaining a specific check number is simply an unnecessary exercise and a waste of time and money. Such requirements are not about environmental compliance and this requirement should be removed from the Annual Report.

Part I A6. The City's Program Plan will not be able to reflect the requirements of the yet to be issued Permit. These plans were created to support a permit proposed to be issued in 2006. The permit was not issued and the plans were not revised and updated. As such the City will need at least 12-18 months after the permit is issued to develop a program plan that will properly support the new permit. It would appear better to have additional time to be able to adequately develop the Program Plan.

Part I B.1. Stormwater Management. Planning. This section is confusing. It seems that the requirement would require the Commonwealth to be micromanaging localities' own BMP prioritization and selection process. Surely the Locality should know the best BMPs for its own locality.

Part I B.2a. Redundant requirements. The draft permit spends a great deal of time restating E&S Program Requirements. As the City is already required by the Commonwealth to meet these regulations, the reiteration of them in the permit is redundant. Is there a reason these regulations are being re-applied in this permit?

- Part I B.2e. Illicit Discharges and Improper Disposal. The City is already operating and reporting under a Special Consent Order for Sanitary Sewerage. To have the permit reiterate the requirements of the Order seems unnecessary. The City must meet the requirements of the Order, the Permit does not have to reiterate these requirements for DEQ to be assured that they will be met.
- Virginia Beach has no TMDL's for floatables or litter and one is not necessary, as the City already has an effective litter control program. This requirement may be a leftover requirement from another jurisdiction, but the City would ask that it be removed.
- I.B.2.d)(1-3). All of these plans and recordkeeping or housekeeping items are already required by other Virginia Codes or regulations. They should be removed since they are just a duplication of regulatory requirements with which the City is already complying.
- Part I B.2.d)(4). There does not appear to be a clear definition for an Integrated Pest Management Plan. All Mosquito Control activities are governed and reported under existing state regulations. Currently, we have zero acres under what is considered IPM Plans. We spray consumer-grade herbicides where we need to control weeds – roadways, curb lines, sidewalks, planting beds, etc. All chemical application is performed by Certified Pesticide Applicators or Registered Technicians, and all chemical application activities and record keeping are governed under existing Virginia Codes and regulations. This should also be removed as a redundancy in regulatory requirements.
- This also applies to reporting requirements. The City already has to report to DEQ disturbed acres MONTHLY as part of its E&S program. Is there a reason why it is also required annually here? Is there a specific benefit that it serves?
- Part I .B.2.d. Specific Reporting Requirements – The first two are already being reported annually to either DCR or VDACS, and the third is not defined by any regulation that can be found. It would be much easier for the City to only report those items that are not already being reported. This duplication of effort is time consuming and costly.

Part I B.2.g 1-5. Industrial and High Risk Runoff. DEQ issues and monitors compliance with Industrial Discharge Permits. The City should not be put in the position of assuming DEQ's responsibilities in this regard.

Part I B.2.h.3. Full identification, reclassifying by HUC, and definition of the local watersheds for all 5000 of the City's outfalls cannot be realistically accomplished in 18 months. Virginia Beach contains over 300 square miles of land and such identification is a monumental task. This is a very expensive task and one that will be ongoing as every new outfall is established. At the very least additional time is required to complete the task..

Part I B.2. j. Specific Reporting Requirements. Voluntary retrofits that are placed on private property are not reported to the City unless they need E&S or VSMP Permit approval. Unfortunately, any information provided by the City will be incomplete at best. There is little value in incomplete and unverified data.

Part I B2l. True dry weather screening of 100 outfalls will be challenging given the tidal influences and groundwater intrusion into the storm drain system here in the Tidewater region. The City currently performs dry weather screening on 25 outfalls, which are difficult to locate. The number of screening locations required by the draft permit will force the City to move well up the drainage systems, increasing the cost and time involved. The permit should reflect this if 100 locations are desired or continue with the existing 25 sites. The need for this number of sites should be explained, as the current program costs will be at least quadrupled without clear benefits.

Part 1 B.2.m. The City maintains all of its roads and drainage systems except for Interstate 64 and 264. Coordination with VDOT is appropriate, but the detail specified in the permit may not be required. It was noted that the waste load allocation for the Back Bay, North Landing River and Pocatoy Creek TMDL was split between VDOT and the City in Attachment A. However, this is incorrect as VDOT does not maintain the roads in the City.

Integrating TMDL Action Plan and Permit

Part 1 D.1b.1g-h. TMDL Action Plan. Chesapeake Bay Watershed TMDL Planning. There are still concerns that the City is getting no credit for BMPs installed prior to 2009. The requirement to offset projects that were approved for greater than 16% impervious cover without stormwater treatment requirements is troublesome. Virginia Beach had a program approved by the State that allowed greater percentages of impervious cover than 16. Now, Virginia Beach has to make up the difference in pollutant loads when the projects were approved as legal when they were built. This is also true of grandfathered projects that are permitted to not meet the Stormwater regulations of July 1, 2014. The City should not be held responsible for identifying and compensating for legal development loads.

Also, we do not know which pre-2009 BMPs have been included in the Chesapeake Bay model even though BMP data was provided to the state.

Only the Elizabeth River Basin is in the Lower James River. The loading rates given in the tables are not appropriate for most of Virginia Beach.

Part I D.1.g. The state has already requested BMP information to update the Bay Model. Determining the amount of development and additional pollutant loadings from development since 2009 to add to the 2008 model is a time and resource consuming process. As rerunning the model is imminent, it would appear this “look back” is a waste of time and resources since new loadings and removal requirements will be assigned from the new Bay Model. Such resources could be better allocated.

Part I B.2b.6i.1. Storm Sewer Infrastructure Management. Specifying 100% inspection of the storm drainage infrastructure is unrealistic and unnecessary. The City is staffed to react to system problems which are easily reported through our customer service process. 100% inspection of systems which are operating properly is a waste of resources.

Additional Comments:

The MS4 draft permit is legally justified by the provisions of the Clean Water Act, however there are various provisions of the permit that are not based upon these Clean Water Act provisions. These include the requirements of Public Utilities’ Special Order by Consent. The City must comply with the requirements of the Order, including the amount of sanitary sewer line that must be inspected. To include stricter requirements than the negotiated Order, requiring the City to inspect 280,000 feet per year (B.2.e.(2)) is arbitrary and redundant, furthering only the ability for DEQ to cite the City twice for any violation of the Order. This is also true of the requirements for Erosion and Sedimentation control and the reporting of illicit discharges from industrial VPDES permit holders. There is no rational reason to require various provisions of the permit that are already required by other state and federal agencies.

The Commonwealth of Virginia is a Dillon Rule state; therefore, the City only has the authority that the State grants it. This is often an issue in the permit, specifically in those areas where constitutional areas are infringed. There is no authority for the City to inspect industrial sites for violations of the MS4 permit. Even the inspections done by the Fire Marshal for environmental crimes would not allow for the random or routine inspection of such sites. If there is a violation, there may be provisions that would allow the City to examine such violation with the use of a search warrant on probable cause, but not for simple inspections. Without such authority the City is unable to meet the requirements of the draft permit, particularly for industrial sites (B.2.g and W) and should not be required to violate the constitution to comply with the MS4 permit.

DEQ must provide a reasoned rationale and justification for the provisions of the permit. Without such justification, the actions of the agency are arbitrary and capricious. The Fact Sheet provided with the draft permit is not sufficient to provide such a basis. It is simply a recitation of the permit itself without providing the solid and scientific basis for most of the permit. Such lack of justification is most evident in those areas of the permit that require a specific number and supersede the ability of the City to prioritize its resources and projects.

The seven (7) projects required in B.2.b of the permit are a classic example. The justification for seven is nowhere to be found in the permit or the fact sheet. It could well be three or twelve. The same holds true for the 280,000 feet of sanitary sewer that is required to be inspected annually. Also the prioritization of businesses that are listed at B.2.g.6.(b) do not allow the City the ability to make such determinations on its own. If DEQ believes these businesses are a threat to the environment, then they need to be added to the list of industries that must obtain their own VPDES permit.

The cost of full compliance with this draft permit will be staggering. Rough estimates run into the millions of dollars. Unfortunately, this will leave little to no resources to construct and implement truly effective water quality projects and programs. A huge percentage of this permit results in data processing and information transfer to the Department of Environmental Quality. The City of Virginia Beach objects to this major unfunded mandate as it severely impairs the City's ability to construct real and effective retrofits to the storm drainage system.

The City of Virginia Beach looks forward to settling these permit concerns and continuing its goal of restoration of local and national water bodies with the assistance of all localities and the DEQ. Please contact me with any questions. I can be reached at bjohnsto@vbgov.com or (757)385-4519.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Johnston', with a long, sweeping horizontal line extending to the right.

William J. Johnston, PE
VPDES Permit Administrator

CC: James K. Spore, City Manager
David Hansen, Deputy City Manager
Phillip A. Davenport, Director, Public Works
John E. Fowler, PE, City Engineer
Phillip j. Roehrs, PE, Water Resources Engineer

**MEMBER
JURISDICTIONS**

March 25, 2015

CHESAPEAKE

Jaime L. Bauer
Environmental Specialist II
Department of Environmental Quality
Commonwealth of Virginia
P.O. Box 1105
Richmond, VA 23218

FRANKLIN

GLOUCESTER

HAMPTON

RE: Amend and Reissue the Draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act

ISLE OF WIGHT

Dear Ms. Bauer:

JAMES CITY

Thank you for extending the deadline to submit comments from February 27, 2015 to March 31, 2015. The following comments are made to the draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act ("Permits") and are submitted by the Hampton Roads Planning District Commission ("HRPDC") on behalf of the HRPDC's Phase I MS4 member jurisdictions ("MS4 Localities" or "Localities").¹

NEWPORT NEWS

NORFOLK

POQUOSON

PORTSMOUTH

The Localities may submit their own comments as well and may choose to append these comments to their own and incorporate them by reference. We appreciate the opportunity to discuss comments with DEQ representatives on Monday, April 13, 2015, from 9:00 a.m. to 12:00 p.m. in the HRPDC Boardroom at 723 Woodlake Drive, Chesapeake, Virginia 23320.

SMITHFIELD

SOUTHAMPTON

I. Introduction

SUFFOLK

The MS4 Localities and HRPDC appreciate the Department of Environmental Quality's ("DEQ's") willingness to address many of our concerns with the draft Permits; however, some concerns remain in both the draft Permits and the draft Fact Sheets accompanying the Permits ("Fact Sheets").

SURRY

VIRGINIA BEACH

The MS4 Localities acknowledge that responsibility for this program has recently been transferred from the Department of Conservation and Recreation ("DCR") to DEQ. For this reason, it is important to note that HRPDC has already expressed concerns about the Bay TMDL provisions in the General Permit for Discharges of Stormwater from Small MS4s ("General Permit") and in the draft stages of the Phase I Permits. Such comments were

WILLIAMSBURG

YORK

¹ The large (Phase I) MS4 jurisdictions are the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach.

made on those Permits in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014. The prior comments are attached here and incorporated by reference (see Attachment 1). Many of the comments and concerns have remained consistent since the earliest communication on the topic.

II. Chesapeake Bay TMDL Action Planning

A. The baseline loading rates are inaccurate and their use in calculating baseline pollutant loads will require the MS4 Localities to achieve greater load reductions than necessary to reach their Bay TMDL target loads.

Although not fully explained in the Fact Sheet, we understand that the baseline loading rates in Section I.D. of the Permit were calculated using state-derived estimates of the types, numbers, and efficiencies of stormwater Best Management Practices ("BMPs") installed on the acreage of developed impervious and pervious land in each river basin as of June 30, 2008. These estimates were then used as inputs to the Chesapeake Bay Watershed Model to produce basin-wide 2009 edge of stream ("EOS") loading rates for each pollutant of concern (nitrogen, phosphorus, and total suspended solids). Neither DCR nor DEQ has provided a meaningful explanation of how it arrived at its BMP estimates. It is apparent that DCR's BMP estimates are inconsistent with Locality-documented BMP implementation data as of June 30, 2008. During the Phase II Watershed Implementation Plan ("WIP") process, the Localities found significant discrepancies between local and State BMP data and reported this information to DCR in February 2012, but DCR neither corrected its data nor responded to the Localities' findings.² DCR's failure to use updated BMP data prevented it from calculating accurate baseline loading rates and that problem remains to the present day.

B. The process of averaging flawed loading rates over the entire basin further discounts past BMP implementation by the MS4 Localities.

Baseline loading rates derived using BMP implementation data averaged over the entire James River basin fail to account for greater BMP implementation by localities that are subject to the Chesapeake Bay Preservation Act ("CBPA"), and therefore, over-estimate loading rates for these localities. As directed pursuant to the CBPA, the 38 Virginia localities in the tidal portion of the Chesapeake Bay Watershed (including 16 localities within the HRPDC) have been requiring developers to offset nutrient and sediment loads since 1990 by installing stormwater BMPs. The tidal localities receive only partial credit for the resulting lower loading rates because the basin-wide average BMP

² As an example, one locality in Hampton Roads contains 3,000 acres of developed land. According to DCR's 2009 Progress Run, BMPs in this locality treat only 300 acres. Locality ground-truthed data indicates, however, that BMPs treat three times as many acres for a total of 900 acres. In this example, the state estimates that approximately 1/10 of the area of the locality is treated by BMPs, when in actuality, closer to 1/3 of the acres in the locality have the benefit of BMP treatment.

implementation estimates used by DCR simply offset the higher loading rates of those localities in the non-tidal portion of the basin rather than giving full credit to the localities that actually achieved the reductions.

C. The MS4 Localities should not be required to offset loads from private development that was constructed in accordance with stormwater regulations.

The Localities object to the requirement to offset projects that were approved for impervious cover at greater than 16 percent without stormwater treatment requirements. CBPA localities had programs approved by DEQ/DCR that allowed more than 16 percent of impervious cover and should not be required to offset loads from private development that was in compliance with stormwater regulations in effect at the time of development. The State should not require Localities to retroactively subsidize private development.

The Permit also requires Localities to offset loads from all known land disturbing projects that qualify under the "grandfathering" provision in the Virginia Stormwater Management Program ("VSMP") regulations in Part I.B.2.a. This requirement is not appropriate for the following reasons:

1. If a project is "grandfathered," only portions of the project for which construction commenced within the first Permit cycle and one renewal cycle are grandfathered pursuant to 9 VAC 25-870-48. Therefore such status is only applicable for a given period of time. Localities cannot predict which projects will be constructed in the requisite timeframe.
2. Localities should not have to accept the additional financial burden of offsets when the decision to approve the projects did not factor in this requirement.
3. Some grandfathered projects will never be constructed and Localities should not have to provide offsets for these projects. A determination of grandfathered status would not be made until such time that a project owner indicates intent to begin construction by making application for required City permits. For various reasons many projects which are approved never continue through to construction. The Localities have no way to predict this in advance and thus cannot plan for this requirement.

D. DCR has failed to address earlier requests from HRPDC and the Localities to correct the same deficiencies in the baseline loading rates identified in these comments.

The HRPDC and the Localities alerted DCR (and now DEQ) to the above-described deficiencies on more than one occasion. Such comments were made

in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014. See Attachment 1. DCR responded to a number of our questions related to the baseline loading rates, but neither the Localities nor the HRPDC ever received a reasoned explanation and justification for the decision to develop the baseline loading rates in Section I.D. of the Permit using the State basin-wide BMP data and the 2009 Progress Run.

Two of the more obvious examples of this are (i) DCR's failure to revise BMP implementation data when Localities provided updated data for DCR's Phase II WIP data call, and (ii) DCR's reliance on a directive from the Environmental Protection Agency ("EPA") to use the 2009 Progress Run to derive the baseline loading rates rather than exercising its own judgment and discretion to determine whether some other model run would produce more accurate loading rates.³

The Fact Sheets provided by DEQ do not provide a reasoned rationale and justification for using the baseline loading rates in Section I.D. of the Permit. Instead, the Fact Sheets do little more than repeat much of what is in the Permit. The Phase I and Phase II WIPs fail to provide a rationale and justification for the baseline loading rates, and instead, like the Permit, offer only an abbreviated and inadequate explanation of the basis for the rates.

Although courts accord considerable deference to an agency's exercise of its discretion, the agency must exercise that discretion in a way that is not arbitrary and capricious. In short, the agency must provide a reasoned rationale and justification for its action.⁴ It is not enough for an agency to simply identify the basis for its action as DEQ has done.

E. Use of the 2010 No Action Model Run would address the deficiencies in the baseline loading rates.

DEQ can correct the above-described deficiencies by modifying Section I.D. of the Permit to instruct Localities to calculate their baseline loads using loading rates from the 2010 No Action Model Run instead of the 2009 Progress Run (the 2010 No Action Model Run reflects pollutant loads without BMPs). Under this approach, Localities would also submit data on actual BMP implementation and the resulting pollutant load reductions from these BMPs and receive credit for these reductions beyond their calculated baseline loads. This approach would (i) use the most accurate BMP data in the development of loading rates, (ii) avoid the use of inaccurate basin-wide loading rates because locality-specific

³ See August 15, 2011, letter from John Carlock (HRPDC) to Joan Salvati (DCR) and August 31, 2011, email response from Noah Hill (DCR) to Jennifer Tribo (HRPDC), copies of which are in Attachment 1 to these comments.

⁴ See *Chem. Mfrs. Ass'n v. EPA*, 28 F.3d 1259, 1265-66 (D.C. Cir. 1994); *Va. Real Estate Comm'n v. Bias*, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983); *Env'tl. Defense Fund v. Va. State Water Control Bd.*, 15 Va. App. 271, 277-78, 422 S.E.2d 608, 611-12 (1992); *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 241-44, 369 S.E.2d 1, 19-24 (1988); *Atkinson v. Va. Alcoholic Beverage Control Comm'n*, 1 Va. App. 172, 176, 336 S.E.2d 527, 529-30 (1985).

Part I.B.2.g.3. requires Permittees to review Discharge Monitoring Reports ("DMR") that are required to be submitted to DEQ by VPDES permits. Reviewing programs for permit compliance is the responsibility of DEQ. The Localities object to this requirement.

Further, the Localities have expressed concern that some might construe an exercise of authority under these clauses as unenforceable under the doctrine of the "Dillon Rule." The unprecedented shift of these responsibilities from the state to the localities could potentially expose the locality to public criticism, enforcement action, or litigation.

C. Prioritization of Industrial Inspections

Rather than inspect the outfalls of VPDES-permitted facilities, Localities should prioritize industrial inspections, perhaps focusing on those without VPDES permits. Localities should base their prioritized schedule on impairment or areas where there are concerns of pollutants, not those listed in this section. If the state finds these are high polluters, then they should be included in the Industrial Permit program.

V. Stormwater Management Projects through the TMDL Action Planning Process.

Part I.B.1. should be removed from the Permit. Localities will provide a list of stormwater projects 24 months after the Permit effective date as part of the Bay TMDL Action Plan.

The basis for requiring seven retrofit projects in Part I.B.2.b. is unclear and the number of projects is arbitrary. This requirement should be removed from the Permit. Localities are required to develop a Bay TMDL Action Plan and implement projects to reduce pollutant loads by five percent by the end of the Permit cycle. This metric is reasonable and makes a requirement for a specific number of projects irrelevant.

VI. Other Significant Issues

A. Effective Date of Permit and the Annual Reporting Period

Regardless of the Permit effective date, DEQ should ensure the annual reporting period coincides with the fiscal year (FY). If the effective date of the Permit does not coincide with the FY, then adjust the other Permit deadlines accordingly to allow for Locality budget cycles.

B. MS4 Program Plan Development

There is no timeframe provided for the development of the MS4 Program Plan in Part I.A.6. The Localities do not have active MS4 Program Plans; they are drafts developed as part of the Permit application process per DCR's request.

The Localities require time to develop/update the MS4 Program Plan. We suggest allowing the Localities one year to develop/update the MS4 Program Plan. Additionally, the MS4 Program Plan and the Annual Reports should be recognized as different documents, all under this Permit. The MS4 Program Plan spells out the roles, responsibilities, and procedures for implementing Permit requirements, while the Annual Report is a compilation of specific tasks that were accomplished in that specific Permit year.

C. Permit Organization

The third bullet listed in Part I.B.2. requires the permittee to report their strategy to address maintenance of stormwater management controls that are designed to treat runoff solely from the individual residential lot on which they are located. This reporting requirement would be more appropriate in Part I.B.h.2.a.i., which is the section regarding individual residential lot BMPs. The Localities suggest language closer to 9 VAC 25-870-112.B. As an example: "stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located shall demonstrate to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority."

D. Stormwater Management of Roadways

1. Part I.B.2.c.1. requires the Localities to develop an accurate list of permittee maintained roads, streets, and parking lots. The list is supposed to include the street name, the miles of roadway not treated by BMPs, and miles of roadway treated by BMPs, no later than 12 months after the effective date of the Permit. The Localities request that this deadline be extended to 24 months after the effective date of the Permit to allow localities to develop the list in coordination with the Action Plan.
2. Localities request removing the requirement to report the parking lot in Part I.B.2.c.1., as Locality databases are organized by road names.
3. Part I.B.2.c.2. requires the permittee to develop and implement written protocols for permittee maintained roads, equipment maintenance areas, and material storage areas to minimize pollutant discharges. Localities request removing both "equipment maintenance" and "material storage" areas from the list. The high priority City facilities, where equipment maintenance and material storage occurs, will be addressed as part of the SWPPPs that are required in Part I.B.2.i.2.

E. Pest Management

Part I.B.2.d.4. of the Permit requires the Permittee to report the number of acres that are managed under Integrated Pest Management Plans ("IPM"). Localities

request that the requirement be removed. This requirement is not justified or explained in the Fact Sheet.

F. Sanitary Sewer Inspection

Part 1.B.2.e. requires inspection of the sanitary sewer system. These provisions are not appropriate for the Localities as the Localities have different legal obligations that still meet the requirements under applicable provisions of state and federal law. Specifically, since 2007, the Localities have been coordinating a regional approach to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements to be undertaken pursuant to the Special Order by Consent ("Consent Order") and, under that Consent Order, developed Regional Technical Standards addressing the following: (1) data collection and flow monitoring, (2) Sewer System Evaluation Survey (SSES) planning, (3) sewer system condition assessment, (4) rehabilitation planning, (5) hydraulic modeling and performance assessment, (6) regional design guidelines, (7) regional operating guidelines, and (8) other technical requirements. See Attachment 2.

On December 9, 2014, a new Consent Order ("Amended Consent Order") terminated prior Consent Orders⁵ and implemented a sanitary sewer maintenance, operation, and management (MOM) program. The Hampton Roads Sanitation District ("HRSD") has assumed sole responsibility for all aspects of the Regional Wet Weather Management Plan ("RWWMP") and the HRSD MOM implementation in the Federal Consent Decree.⁶

The Localities are completing their required inspections and this requirement should be removed from the Permit.

G. Floatables

Part I.B.2.e.3. requires the development of a program to reduce the discharge of floatables. This requirement should be moved to Part I.B.2.j. Localities continue to address litter through public education and outreach campaigns. Localities should report on the effectiveness of the litter prevention programs instead of site surveys. Remove the fourth bullet in the Specific Reporting Requirements in Part I.B.2.e.3.

H. Illicit Discharges and Spills

1. The Permit requires in Part I.B.2.e. that each Annual Report includes a list of illicit discharges identified, the source, a description of follow-up activities and

⁵ See Attachment 3, p. 5, superseding and terminating Consent Orders issued by the State Water Control Board on September 26, 2007, December 17, 2001, and March 17, 2005.

⁶ *U.S. v. HRSD*, Civ. No. 2:09-cv-481, 2012 U.S. Dist. LEXIS 46984 (E.D.Va. Apr. 2, 2012).

systems; however, providing a comprehensive list of these tasks each year is an extensive administrative task. Localities suggest providing a summary of the work completed and have the database systems on hand for inspection upon request.

J. City Facilities

Part I.B.2.i.1.d. should be revised to indicate that Localities will maintain municipal vehicles to minimize fluid leaks that discharge to the MS4 system. The municipal yards that house the vehicles will have SWPPP coverage.

K. Public Education/Participation

Part I.B.j.4. requires the permittee to post the MS4 Program Plan on their website no later than 30 days after the effective date of the Permit. As discussed in Section B above, there is no specified timeframe for the development of the MS4 Program Plan. Localities suggest stating that the Permittee post the MS4 Program Plan within 30 days of Plan approval.

L. Dry Weather Screening

Part I.B.2.l.1.a. of the Permit requires the permittee to screen a minimum of 100 of the City's MS4 outfalls each year. Localities suggest changing it to 25 of the City's MS4 structures, which would include catch basins and outfalls. Localities would use professional judgment to determine the areas of concern for screening. The last sentence of Part I.B.2.l.1.a. should be removed to allow for screening locations further upstream.

M. Wet Weather Screening

The wet weather screening program required in Part I.B.2.l.(2) should be removed from the Permit. This requirement is not defined or justified in the Permit or the Fact Sheet. The Regional Monitoring Program is a wet weather monitoring system designed to evaluate 10 to 15 storm events annually, with 40 to 60 samples collected from each station each year, depending on hydrologic conditions. Each locality is dedicating \$84,000/year to the Regional Monitoring Program. Additional wet weather screening is burdensome and not beneficial.

N. Structural and Source Controls Compliance Monitoring and Tracking

In the specific reporting requirements of Part I.B.2.h., the permittee is required to report historical BMPs in the fourth Annual Report. This requirement should be deleted. Localities will report the historic BMPs in each Annual Report and through DEQ's 2015 Historical Data Cleanup Request for Applications.

O. Other TMDL Action Plans

1. The Localities request that DEQ provide guidance on the Non-Bay TMDL Action Plans with a specific focus on bacteria and PCB TMDLs.
2. In Part I.D.2.b.4., the Localities suggest changing “facility of concern” to “high priority municipal facility” to be consistent with the rest of the Permit.
3. In Part I.D.2.g., BMPs that will be implemented in the “next permit term” should be included in the next Permit.
4. In Part I.D.2.g., the last sentence reads: “The permittee shall also evaluate and modify the estimated end date for achieving the applicable wasteload based on information acquired during the Permit cycle.” It is not feasible for Localities to estimate the date for achieving the wasteload for PCBs without additional guidance and identification of BMPs or actions that effectively eliminate PCBs. Additionally, Localities have no control over legacy PCB sources.

P. MS4 Program Implementation

The requirements of section I.B.2. are not proper permit terms as they only restate exiting law and regulation. By doing this in a VPDES permit, DEQ may subject Localities to EPA enforcement of state law and dual exposure to sanctions and penalties.

As an example, the EPA fined Norfolk for an alleged failure to obtain VSMP permits on City of Norfolk construction sites.⁷ Norfolk argued that this was not a violation of the current MS4 permit because the section under which the violation was noted required Norfolk to obtain VPDES Industrial Permits, not General Construction Permits. Norfolk argued that this would be a violation a state law and was, therefore, under the jurisdiction of DCR and not the EPA.

It is not necessary or justified to restate each provision of state law and regulation as a separately enforceable aspect of permit compliance. The Localities request revision to remove any sections that appear to separately require Localities to comply with state law or regulations associated with Virginia Erosion and Sediment Control Law § 62.1-44.15:51, *et seq.* of the Code of Virginia, Virginia Erosion and Sediment Control Regulations 9 VAC 25-840 *et seq.*, the Virginia Stormwater Management Act § 62.1-44.15:24 of the Code of Virginia, or Virginia Stormwater Management Program Regulations 9 VAC 25-870.

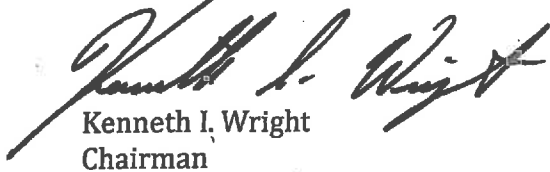
⁷ Circa 2010.

Q. Definitions

This section includes a reference to the Virginia Stormwater Management Act; however, the citation is for the regulations.

In conclusion, the purpose of planning district commissions, as set out in the Code of Virginia, § 15.2-4207 is "... to encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance." The Localities and the HRPDC appreciate your careful consideration of amendments to the Permits. It is our goal to work with DEQ to find reasonable solutions that will benefit all. Given the extent of the comments, the Localities do not support releasing the draft Permits for Public Notice at this time. We look forward to continued discussions on the presented concerns.

Sincerely,



Kenneth I. Wright
Chairman

JS/jc

Attachments

Copy: David Paylor, DEQ
Melanie Davenport, DEQ